

**FILED**

**MAY 22 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CRUZ ALEJANDRO MARTINEZ-  
LUNA,

Defendant - Appellant.

No. 05-50462

D.C. No. CR-05-00136-NM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Nora M. Manella, District Judge, Presiding

Submitted May 15, 2006 <sup>\*\*</sup>

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Cruz Alejandro Martinez-Luna appeals the sentence imposed following his guilty plea to illegal reentry following deportation in violation of 8 U.S.C. § 1326.

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Martinez-Lunez contends that district court err by sentencing him to a term of 57 months when he only pled to the elements of 8 U.S.C. § 1326(a), which carries a maximum sentence of two years. He contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) is no longer good law. This issue is foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres* even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

AFFIRMED.